

LCI 201 :LAW OF CONTRACT I

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QUESTION: 8. “...once the consideration is of some value in the eye of the law, the courts have no jurisdiction to determine whether it is adequate or inadequate.”- Gaji v Paye (2003) FWLR pt. 163 p.1

INTRODUCTION

It is a settled principle that consideration is a very important and fundamental element of a valid contract, and its absence renders a contract unenforceable. In other words, a party that has not furnished consideration in support of a contract cannot enforce it. Consideration refers to something of value exchanged between parties to a contract, which must move from the promisee to the promisor, and which the law recognizes as sufficient to enforce a promise. This raises a crucial question: how does the court determine what constitutes 'a thing of value'? This work will explore the exegesis of how a thing of value is determined by the court, and whether the court has jurisdiction to determine if a consideration is adequate or inadequate. It is pertinent to define consideration in order to fully understand this legal principle.

A widely accepted and comprehensive definition was provided by **Lush J** in the case of **Curri v. Misa**, where he stated:

“A valuable consideration in the eye of the law may consist either in some rights, interest, profit, or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered, or undertaken by the other”

The consideration does not only consist of profit by one party but also exists where the other party abandons some legal right in the present or limits his legal freedom of action in the future as an inducement for the promise of the first.

So it is irrelevant whether one party benefits but enough that the party giving it does thereby undertake some burden or lose something which in contemplation of law may be of value.

From the above, it is clear that “a thing of value” in law does not necessarily have to be monetary, it may take the form of forbearance, detriment, loss or responsibility. What matters is that there is an exchange: something given in return for a promise.

WHAT ARE THE IMPORTANCE OF CONSIDERATION IN CONTRACT?

The importance of consideration in a contract cannot be overstated. To enforce a contract, it has to be proved that the party instituting the action suffered a detriment or loss, or a benefit was conferred on him in actual sense.

Some key importance of consideration include

- **ENSURES MUTUAL OBLIGATION:** consideration ensures that both parties give something for something. It is a principle that is grounded in reciprocity. If only one party gives the consideration, then it is one-sided. The parties have to prove that they both suffered a loss or a benefit; this allows them to have a mutual obligation to keep to the terms of the contract, a breach of which can be instituted in the law court. This principle is reiterated in the case of **Combe v. Combe** [1951] 2 KB 215, where a wife was denied the right to sue her ex-husband over an unfulfilled promise to pay her an allowance. It was held that she had given no consideration to have a cause of action.

The court, per Denning LJ, held that: “the doctrine of consideration is too firmly fixed to be overthrown by a side-wind....it still remains a cardinal necessity of the formation of a contract”.

- **ACTS AS EVIDENCE OF INTENTION:** consideration implies that the parties have a clear intent to be bound by the terms of a contract. A party that gives consideration is assumed to have given their unequivocal consent to be held bound/accountable in the event of a breach.

- **PREVENTS GRATUITOUS CLAIM:** consideration helps the court in distinguishing vague promises and helping them to avoid enforcing them. This saves the court from getting involved in non-contractual engagements. In the case of **White v. Bluet**[1853]23 L.J. Ex.36, a son's promise to stop complaining was held to be an invalid consideration. The court won't enforce bare promises or informal misunderstandings, but legally binding agreements.

- **IT DISTINGUISHES ENFORCEABLE PROMISES FROM MERE SOCIAL OR MORAL OBLIGATIONS:**

In contrast, not every promise is enforceable. For a contract to be enforceable it has to be supported by consideration. Moral obligations on their own cannot amount to a valid consideration, this was reinforced in the case of **Thomas v. Thomas (1842) 2 Q.B. 851**, where the court held that a woman's payment of 1 pound per year was a valid consideration, despite the fact that living in the house was her husband's wish. From this case, it can be inferred that moral obligation alone is not sufficient to enforce a promise, it has to be backed by consideration.

Having discussed the meaning and importance of consideration, it becomes important to discuss one of the key principles that governs its role in contract formation, which is that the law only requires that a consideration be of value/sufficient and not necessarily adequate. This principle was established in the

Nigerian Supreme Court in the case of **Gaji v. Paye (2003) FWLR (Pt. 163) p.1**, where the court held that:

“...once the consideration is of some value in the eye of the law, the court has no jurisdiction to determine whether it is adequate or inadequate.”

This means that the court does not concern itself with the determination of what is fair, right, or balanced as a consideration between parties, rather it focuses on whether the thing exchanged is of legal value. The reason for this principle is to uphold the principle of freedom of contract, which allows individuals to go through the bargaining process without interference; giving individuals the latitude to determine the terms of their agreement. Interference by the court will mean the court is trying to make a contract on behalf of the parties which is not possible, as it undermines contractual autonomy.

It is important to note that this principle does not apply in cases where the contract was induced by fraud or duress; in such cases, the court can inquire into the fairness of the agreement. However, the court will not invalidate a contract on the ground that someone got the “better” part of it

NATURE OF CONSIDERATION

The quote from **Gaji v. Paye (2003) FWLR (Pt. 163) p.1** “...once the consideration is of some value in the eye of the law, the court has no jurisdiction to determine whether it's adequate or inadequate”.

This highlights a fundamental principle of contract law: the sufficiency, not the adequacy, of consideration is what matters to the court. In contract law, consideration refers to something of value exchanged between the parties to a contract. It is one of the essential elements that make a contract legally binding,

something of value must be given for a promise in order to make it enforceable as a contract. An important aspect to note is that consideration must:

- i. Be something of value and
- ii. Be sufficient in the eye of the law.

Sufficiency and adequacy are related concepts, however they have distinct meanings. Adequacy typically refers to the quality of being sufficient or acceptable in terms of quality, quantity, or degree. It implies meeting a standard or requirement, often in a satisfactory or acceptable manner, that is equality in fulfilling an obligation. Sufficiency, on the other hand, refers to the state of being enough or sufficient to meet a need, requirement, or demand. It emphasizes the minimum requirement of quantity or amount just needed to achieve a particular goal. The major difference between the two concepts in law is that sufficiency means the consideration must be something the law recognizes as having value. This could be money, goods, a service, a promise to do something, or even a promise to undertake some burden. Adequacy on the other hand means the fairness or equivalence of the value exchanged. Under common law (and Nigerian contract law), courts do not assess whether what was given in return is equal or fair in commercial or economic value, only that it is legally sufficient.

In **Gaji v. Paye**, the Supreme Court of Nigeria reiterated this longstanding contract law rule. The case involved a dispute over a land transaction where one party tried to argue that the consideration given was not adequate for what was received. The court held that once there is evidence that some consideration, however small or seemingly disproportionate, has been exchanged and recognized by law, then the court's duty is to enforce the agreement, not to determine whether the consideration was adequate. This is because parties are deemed to be the best

judges of their own bargains. Now there is a rationale behind this rule which includes

- i. Parties should be free to contract on their own terms without court interference in the fairness of the bargain.
- ii. Courts cannot evaluate the subjective value that parties place on items or promises. What may seem unfair to one party might be perfectly acceptable to another due to personal or business reasons.
- iii. If courts were allowed to evaluate adequacy, it would open floodgates for litigation and make enforcement unpredictable.

Using an example: A sells his land to B for ₦1,000. It might seem grossly unfair, but as long as there is no fraud, duress, undue influence, or mistake, and A voluntarily agreed, the court will not interfere simply because of the low price.

Also if someone promises to give up smoking (a legal right), that can count as sufficient consideration, even though no money or property is exchanged. There are similar cases in which this principle applied, this principle is consistent with English contract law, from which Nigerian contract law derives. In **Thomas v. Thomas (1842)**, it was held that "consideration must be something which is of some value in the eyes of the law, but it need not be adequate." Similarly, in **Chappell & Co Ltd v Nestlé Co Ltd (1960)**, chocolate wrappers were accepted as sufficient consideration even though they had no intrinsic value because they formed part of the agreed bargain. Conclusively, the principle expressed in **Gaji v. Paye** affirms that courts are not arbiters of the fairness of bargains but guardians of legal processes. Once it is shown that consideration exists and has some legal value, the court has no jurisdiction to determine its adequacy. This approach ensures predictability, respects party autonomy, and maintains the integrity of contract law. If a party wants to avoid unfairness, they must negotiate better terms

or prove a legal vitiating factor. The law, in its wisdom, says: a peppercorn is enough, if that's what the parties agreed.

JUDICIAL ROLE: WHY COURTS DON'T ASSESS ADEQUACY

The principle of freedom of contract is a bedrock of contract law, granting parties the autonomy to freely negotiate and determine their agreement's terms, including the consideration, without external interference, provided the contract is lawful and free from vitiating factors such as fraud, duress, or undue influence. Consideration, defined as something of value exchanged between parties, must be sufficient—meaning it has some legal value—but not necessarily adequate in economic terms. Courts refrain from assessing adequacy to preserve this contractual freedom, recognizing that parties are best positioned to evaluate their own interests and determine what constitutes a fair bargain. For instance, nominal consideration like N1 or a peppercorn can sustain a contract if agreed upon, as it reflects the parties' mutual intent. Interfering with the fairness of consideration would introduce uncertainty, discourage commercial transactions, and undermine the predictability essential to contract law, particularly in Nigeria's growing market economy.

The role of courts in contract disputes is confined to ensuring that a valid contract exists, requiring elements such as offer, acceptance, consideration, and intention to create legal relations. Courts verify that consideration is lawful and sufficient, but they do not evaluate whether it represents a fair exchange, as this would involve subjective judgments about value that vary across parties and contexts. For example, courts will not question whether a party received adequate value for their promise, as this is a matter for the contracting parties to decide. However, courts

may intervene in exceptional cases of procedural unfairness, such as unconscionable bargains, coercion, or misrepresentation, where the voluntary nature of the agreement is compromised. In Nigeria, this balance is evident in cases where courts uphold good faith in contract execution but avoid re-evaluating the bargain's fairness. This limited judicial role promotes contractual certainty, respects party autonomy, and safeguards against exploitative practices without overstepping into the parties' negotiated terms.

Nigerian case law strongly reinforces this non-interventionist approach. In

Faloughi v. Faloughi (1995), a case involving a matrimonial property dispute, the Court of Appeal held that the consideration agreed upon by the parties was their prerogative, and courts would not scrutinize its adequacy as long as it was lawful and constituted something of value. The court emphasized that interfering with the parties' bargain would undermine the sanctity of their agreement, absent vitiating factors like fraud. Similarly, in **Gaji v. Paye (2003)**, a dispute over a land transaction, the Nigerian Supreme Court ruled that courts are not concerned with the fairness or adequacy of consideration but with its existence and legality. The court noted that the plaintiff's payment, though arguably disproportionate, was sufficient to bind the contract, reinforcing Nigeria's alignment with the common law tradition of prioritizing party autonomy over judicial reassessment of contractual terms.

Foreign cases further illustrate this principle, providing a comparative perspective.

In **Chappell & Co Ltd v. Nestlé Co Ltd [1960] AC 87**, the English House of Lords held that chocolate wrappers, though of minimal economic value, constituted valid consideration because they were part of the agreed promotional scheme, emphasizing that sufficiency, not adequacy, is the legal standard. Similarly, in **Thomas v. Thomas (1842) 2 QB 851**, a widow's promise to pay £1 per year as rent for a house was upheld as sufficient consideration, with the court explicitly

refusing to assess its fairness. Exceptions exist, such as in **Lloyds Bank Ltd v. Bundy [1975] QB 326**, where an unconscionable bargain was set aside due to undue influence. In Nigeria, courts similarly address unconscionability, as seen in **Okeke v. Okeke (2000)**, where a contract was scrutinized for exploitative terms due to one party's vulnerability. Cases like **Best (Nig.) Ltd v. Blackwood Hodge (Nig.) Ltd (2011)** further highlight the importance of good faith in Nigeria, but courts consistently avoid reassessing consideration's adequacy. By limiting their role, courts ensure contractual certainty while intervening only when public policy or procedural fairness demands, balancing freedom of contract with protections against exploitation.

EXCEPTIONS TO THE DOCTRINE OF CONSIDERATION

The doctrine of consideration is central to the formation of enforceable contracts. It implies that a promise must be supported by something of value (i.e., consideration) for it to be legally binding. While the general principle is that courts will not assess the adequacy of consideration once some value is established, this rule is not absolute. As courts generally adopt the doctrine of consideration, as established in **Gaji v Paye (2003) FWLR pt. 163 p.1**, there are circumstances under which judicial interference becomes necessary to ensure justice. These exceptions often arise where the apparent freedom to contract is tainted by irregularities that undermine consent or fairness.

One major exception is fraud. Courts will interfere where consideration is obtained through fraudulent misrepresentation. Even though some value might have been exchanged, if the contract was formed under false pretences, the consideration is

tainted, and the court can nullify the agreement. Fraud renders the contract voidable at the instance of the defrauded party.

Also, contracts formed under duress (threats or coercion) or undue influence (abuse of power in a relationship) may appear to contain valid consideration, but such agreements are not genuine expressions of free will. Courts will step in to protect parties from exploitation and set aside such contracts.

Where a party enters into a contract based on a misrepresentation of material facts, even if consideration is present, the court may set aside the contract. This protects the innocent party and upholds the principle of fairness.

As a rule, past consideration is not valid. An act done before a promise is made cannot be considered for that promise. However, exceptions exist, especially where the act was done at the promisor's request with an expectation of future payment (**Lampleigh v Braithwait**).

Another exception involves capacity to contract. Minors, persons of unsound mind, or parties under statutory incapacity cannot be bound by a contract in the same way as competent adults. This is another area where the court may look beyond the face of the contract and intervene, even if consideration appears legally sufficient on the surface.

Legal scholars have also provided critical insights into the doctrine of consideration. According to **G.H. Treitel**, consideration serves to differentiate enforceable promises from unenforceable ones. He observed that while the principle of not evaluating adequacy promotes freedom of contract, it must be balanced against the need to protect parties from exploitation, especially in cases involving power imbalances or vulnerable individuals. However, he criticizes the rigidity of the doctrine, suggesting that it can sometimes hinder justice, particularly where parties clearly intended to be bound.

J.C. Smith views consideration as a formal requirement that has, in some cases, outlived its usefulness. He argues that in the presence of intention to create legal relations and mutual assent, the insistence on consideration might be unnecessary and even artificial. He also argues that strict adherence to the sufficiency rule can sometimes produce unjust outcomes, particularly where a grossly inadequate consideration is part of a broader exploitative arrangement.

These scholars support a reformatory approach, advocating that the doctrine should evolve to reflect modern commercial realities and focus more on the presence of mutual obligations than strict legal formalities.

From a practical standpoint, the doctrine ensures that contracts are not mere gratuitous promises but are supported by real obligations. However, by allowing courts to interfere in cases of inequality, deceit, or coercion, the law seeks to balance contractual freedom with social justice.

From a policy perspective, enforcing contracts with no adequate checks could promote exploitation, especially in unequal bargaining relationships. On the other hand, too much interference could undermine certainty and freedom to contract, key principles of classical contract law. In **Commercial Bank (Credit Lyonnais) v. Burch**, although not Nigerian, the English Court of Appeal acknowledged the role of undue influence in invalidating otherwise formally correct agreements. Thus, exceptions to the doctrine act as a safeguard, ensuring that while parties have the liberty to contract, that liberty is not abused.

CONCLUSION

In conclusion, the Nigerian law of contract, as emphasized by Sagay, upholds that consideration must be sufficient but not necessarily adequate. Courts focus on the existence of something of legal value, not its fairness, to protect contractual

freedom and certainty. However, exceptions exist where the contract is tainted by fraud, duress, undue influence, or misrepresentation. This balanced approach prevents judicial interference in private bargains while safeguarding justice and fairness where necessary. Thus, the law respects parties' autonomy while ensuring no party exploits the other under the guise of freedom of contract, maintaining both legal consistency and social justice in contractual dealings.

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